

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DARREL E. NELSON,)	
)	
Petitioner,)	Civil Action No. 06-404
)	
v.)	Judge Gustave Diamond
)	Magistrate Judge Caiazza
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER OF COURT

Darrel E. Nelson is a federal prisoner who filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §2241. The petition was referred to United States Magistrate Judge Francis X. Caiazza for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation, filed on December 14, 2006, recommended that the Petition for Writ of Habeas Corpus filed by petitioner be dismissed. Petitioner filed objections on January 3, 2007, and a response to those objections was filed by the government on January 12, 2007.

Upon *de novo* review of the record as developed before the Magistrate Judge, this court accepts in whole the findings and recommendations made by the Magistrate Judge pursuant to Rule 72.1.4.B of the Local Magistrate Judges Rules.

In particular, this court agrees with the Magistrate Judge's finding that the common law "continuous service rule", which provides that, unless interrupted by the fault of the prisoner, a prisoner's federal sentence runs continuously from the date on which the defendant surrenders to begin serving it, see Weekes v. Fleming, 301 F.3d 1175 (10th Cir. 2002), does not apply in this case because petitioner's total time of incarceration will not be increased as a result of his mistakenly having served a portion of his federal sentence before completion of his state sentence. See Boston v. Attorney General, 2006 WL 3804396 (3d Cir. December 21, 2006) (not precedential). Accordingly, petitioner's objections to the Magistrate Judge's Report and Recommendation will be overruled.

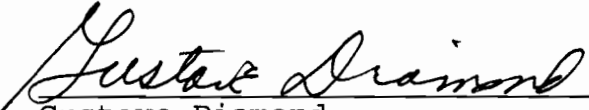
An appropriate order follows.

ORDER OF COURT

AND NOW, this 10th day of April, 2007, upon *de novo* review of petitioner's petition for writ of habeas corpus (Document No. 7), the Magistrate Judge's Report and Recommendation, petitioner's objections thereto, and the government's response, IT IS ORDERED that the Petition for Writ of Habeas Corpus filed by Darrel E. Nelson, be, and the same hereby is dismissed; and,

IT FURTHER IS ORDERED that petitioner's objections to the Magistrate Judge's Report and Recommendation be, and the same hereby are, overruled; and,

IT FURTHER IS ORDERED that the Report and Recommendation of Magistrate Judge Caiazza, (Doc. 14), dated December 14, 2006, be, and the same hereby is, adopted as the opinion of the court.


Gustave Diamond
United States District Judge

cc: Darrel E. Nelson
CN-8670
Reg. No. 04794-068
Federal Correctional Institution
P.O. Box 1000
Cumberland, MD 21501-1000